THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

and

THE HONOURABLE SRI JUSTICE
P.SWAROOP REDDY

WP No.15387 OF 2007

Dt.10-10-2007

K.Nalini ..Petitioner

V.

1. The Commissioner of Police, Vijayawada City, Krishna District and two others. ..Respondents.

THE HONOURABLE SRI JUSTICE
A.GOPAL REDDY

and

THE HONOURABLE SRI JUSTICE
P.SWAROOP REDDY

WP No.15387 of 2007

ORDER: (Per Honourable Sri Justice A.GOPAL REDDY)

The petitioner, sister of detenue-Pidikiti Ratnagiri, challenged his detention pursuant to an order dt. 23-2-2007 passed by the Commissioner of Police, Vijayawada under Secs.3 (1) and (3) r/w Sec. 2(a) & (b) of A.P. Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (herein- after referred to as "the Act 1 of 1986").

Prior to his detention under the impugned detention order, the detenue had been arrested on 29-7-2006 by the Prohibition & Excise Inspector, Patamata, Vijayawada on the allegation that he was found in possession of 35 litres of rectified spirit, 126 nips of illegally manufactured liquor, 96 empty nip bottles, 150 aluminium metal caps without company logo, 20 aluminium metal caps with logo of Bag Pipr, 6 bottles of Venella essence, 200 ml of caramel, 7 sheets of Fake E.A.L's (each sheet containing 90 E.A.Ls) 368 company lebels of President Malt Whisky, Delight Fine Whisky at the house bearing D.No.8-210, Tadigadapa village, Penamaluru Mandal. A case in

Cr.No.10/2006-2007 under Sec. 34(a) of A.P. Excise Act, 1968 was registered and accused was sent to judicial remand. Samples which were drawn were sent to Government Chemical Examiner for Excise, Kakinada, who gave his opinion that liquor sample was coloured flavour liquor and unfit for human consumption. He further opined that the rectified spirit is diluted and unfit for human consumption. The Assistant Secretary (labels), Office of Commissioner of Prohibition & Excise, Hyderabad opined that EAL's seized from the house of the detenue are fake. Prior to registration of Cr.No.10/2006-2007, the detenue was also arrested along with Rampalla Gurumurthy, when they were found in possession of 15 litres of spurious liquor, 17 nip bottles of illegally manufactured liquor, 170 metal caps, 200 ml. Caramel, 2 bottles of Whisky essence, by the Prohibition and Excise Inspector, Vijayawada, Patnama and a case in Cr.No.14/2005-2006 dt. 29-5-2005 was registered. On completion of investigation, police laid charge sheet before the 1st Metropolitan Magistrate, Vijayawada. He was also arrested by the Prohibition & Excise authorities while the detenue along with Abdul Saleem transporting 30 nips, 120 ml. Loose bottle of illegally manufactured liquor on a scooter, and a case in Cr. No. 28/2005-2006 dt. 24-9-2005 was registered; a charge sheet was also filed before the I Metropolitan Magistrate, Vijayawada. From May, 2005 to September, 2006, five (5) cases were registered. Apart from the three cases referred to above, Cr.No.37/2006-2007 was registered for supply of fake EAL's and fake company labels at Kanchikacherla Station, Krishna District and Cr.No.160/2006-2007 for supply of fake EAL's and faked company labels and 550 litres of rectified spirit and 5184 nips of spurious liquor, which were seized at Kovvuru Station, West Godavari District.

As the detenue was continuously involving in bootlegger

activities ie., manufacture, possession, transportation of spurious liquor and supply of fake material to other manufacturers of spurious liquor, the consumption of which is injurious to health and unfit for human consumption and supply of fake material and committed other offences, thereby violating the provisions of A.P. Excise Act since the manufactured IML should be sold through Andhra Pradesh Beverages Corporation Limited after affixing EALs supplied by the Government of Andhra Pradesh, which activities attract Sections 471, 472, 474 IPC. Since liquor manufactured and supplied by him found to be affect the human body system and unfit for human consumption and if the same is allowed to consume, it will cause the chronic diseases like diaherroea, gastric irritation, loss of appetite, loss of memory, blurred vision, damage to the liver and also affect the nerves system of consumer. The Commissioner of Police, Vijayawada city, in exercise of delegated powers vested in him under Section 3(1) & (2) passed the impugned order dt. 23-2-2007 ordering that the detenue be detained from the date of service of detention order. The same was approved by the Government under sub-section (3) of Sec. 3 of the Act 1 of 1986 through G.O.Rt.No.1202 dt. 5-3-2007. On placing the matter before the Advisory Board, it reviewed the case on 29-3-2007 and after hearing the detenue, the investigating Officer and after perusing the connected records, the Advisory Board gave its opinion that there is sufficient cause for the detention of the detenue, Pidikiri Ratnagiri. The Government after duly considering the report of the Advisory Board and material made available before it confirmed the order of detention directing that the detention of detenue be continued for a period of 12 months from the date of his detention ie., 24-2-2007, through G.O.Rt. No.1864 dt. 7-4-2007.

Questioning the detention, the present Habeas Corpus

petition has been filed contending that Grounds of Detention enclosed along with the detention order discloses that the detenue was said to be involved in 8 criminal cases, last criminal case has been registered on 29-7-2006. Since detention order has been passed on 23-2-2007 by placing reliance on stale, irrelevant and non existing facts, the satisfaction of the detaining authority got vitiated; that though 8 criminal cases were referred to in the Ground of Detention no details were furnished and also documents pertaining to 8 crimes were not enclosed along with detention order; that chemical analyst reports dt. 11-08-2005 and 28-10-2005 pertaining to Cr.No.14/2005-2006 and Cr.No.28/2005-2006 respectively disclose that sample of liquor involved in the said crimes is coloured and flavored liquor and there is no mention that the same is unfit for human consumption; that detention order passed by the Commissioner is totally non-application of mind and the same is liable to be set-aside.

The Commissioner of Police-first respondent filed counter-affidavit while denying the allegations stated that he passed the impugned detention order placing reliance on three crime numbers, viz., Cr.No.10/2006-2007, 14/2005-2006 dt. 20-5-2005 and 28/2005-2006 dt. 24-9-2005 and all the material, both in English and Telugu, was served on the detenue under an acknowledgment, and he further referred Cr.Nos.347/2006-2007 and 160/2006-2007 as a passing by remark and the material pertaining to the said crimes was also served on the detenue, which he acknowledged. The material pertaining to five crimes was served on the detenue, both in English and Telugu languages. He denied the allegation that he placed reliance on stale, irrelevant and non-existing facts. He further stated that he placed reliance on Chemical Analyst Reports for passing the order of detention on the ground that poor sections of people on consuming

such spurious liquor, which is unfit for human consumption, are subjected to various ailments, thereby causing widespread danger to the public health and creating feeling of insecurity among the general public, endangering their lives deteriorating their health day- by- day.

No reply affidavit has been filed by the petitioner controverting the contention about supply of documents in all the five crimes referred in the Ground of Detention.

Learned counsel for the petitioner contends that the Commissioner of Police-detaining authority did not consider the relevant material while passing the detention order, namely, chemical analysis reports in two crimes ie., Cr.No.14/2005-2006 and 28/2005-2006, whereunder the Analyst has not opined that consumption of liquor is unfit for human consumption and test of acidity is within limits, therefore, non-consideration of the above two reports vitiate the detention order. In support of the said contention, he placed reliance on the following judgments:

1. ***DODDI SHARADA V. COLLECTOR AND DISTRICT MAGISTRATE HYDERABAD***[1]
2. ***ASHA DEVI V. K. SHIVRAJ***[2]
3. ***DWARIKA PRASAD V. STATE OF BIHAR***[3]***,***

Per contra, learned Advocate General while sustaining the detention order contended that out of three crimes/reports, even if one report of the latest discloses that sample drawn is unfit for human consumption, the same can be taken into consideration for passing a detention order. He further contended that when the detenue continuously involving in bootlegging activities by manufacturing, distributing and selling illicit liquor under various company labels which attract penal action under the provisions of the Indian Penal Code and necessary charge-sheets have been filed for the other

offences, therefore the same can be taken into consideration for passing a detention order. He further contended that all the documents relied on by the detaining authority for passing the detention order were supplied to the detenue to make him an effective representation before the Advisory Board, and infact the Advisory Board after hearing the detenue gave its opinion that there is sufficient cause for his detention and the and the Government after considering the material confirmed the detention order passed by the Commissioner and ordered that detention of detenue be continued for a period of 12 months from the date of his detention ie., 24-2-2007.

In view of the above submissions, the point that arises for consideration is:

> "Whether the detention order passed by the detaining authority as approved by the Government in G.O.Rt.No.1202 dt. 5-3-2007 and confirmed in G.O.Rt. No.1864 dt. 7-4-2007 can be sustainable or not?"

Before dealing with the rival submissions, it would be appropriate to notice relevant statutory provision, which deals with the purpose and intention of Act 1 of 1986.

Sub-section (1) of Sec.3 of the Act 1 of 1986 empowers the Government to make orders detaining certain persons with a view to prevent from acting in any manner prejudicial to the maintenance of public order. Preventive detention is an anticipatory measure and does not relate to an offence, while criminal proceedings are to punish a person for an offence committed by him under the Indian Penal Code. Sub-section (2) of Section 3 allows the detention of a person only if the appropriate detaining authority with whom the powers are delegated under sub-section (2) of Section 3 is satisfied with a view to

prevent such person from carrying on any of the offensive activities enumerated therein, it is necessary to detain such person. The satisfaction of the detaining authority is not a subjective one based on his beliefs or prejudices. There must be a real likelihood of the person being able to indulge in such activities, the inference of such likelihood being drawn from objective data.

Sub-Section (2) of Section 3 deals with delegation of powers by the State Government and provides that if the State Government is satisfied having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1).

Sub-section (3) of Section 3 reads as under:

> When any order is made under this section by an officer mentioned in sub-sec. (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless in the meantime, it has been approved by the State Government.

Sections 2(*b*) defines "bootlegger", which reads as follows:

> "2. (*b*) 'bootlegger' means a person, who distils, manufactures, stores, transports, imports, exports, sells or distributes any liquor, intoxicating drug or other intoxicant in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968, and the rules, notifications and orders made thereunder or in contravention of any other law for the time being in force, or who knowingly expends or applies any money or supplies any animal, vehicle, vessel or other conveyance or any receptacle or any other material whatsoever in furtherance or support of the doing of any of the abovementioned things by himself or through any other person, or who abets in any other manner the doing of any such thing.

Section 2(a) of the Act defines the meaning of the expression “acting in any manner prejudicial to the maintenance of public order” and reads as follows:

> (a) "acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, dacoit, a goonda, an immoral traffic offender or a land grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order". Explanation to Section 2 (a) of the Act reads as under: "For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely inter alia, if any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health.”

The grounds of detention supplied along with detention order disclose arrest of the detenue in Cr.No.10/2006-2007 while he was found in possession of rectified spirit, and sample sent to Govt., Chemical Examiner found to be unfit for human consumption. He was also involved in two other crimes, within proximity of 14 and 10 months respectively. Further two more crimes were registered for his supply fake EALs and fake company labels etc., According to the learned counsel for the petitioner, two cases referred to in the Grounds of Detention, namely, Cr.No.14/2005-2006 dt. 20-5-2005 and 28/2005-2006 dt. 24-9-2005 are not within proximity of Cr.No.10/2006-2007 dt. 29-7-2006 and chemical analyst reports of earlier crimes have not been taken into consideration, therefore detention order vitiates for

non-application of mind. For the said proposition, he placed reliance on the judgment of the Supreme Court in ***ASHA DEVI*** (2 supra) arises out of Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, wherein it was held that the subjective satisfaction requisite on the part of the detaining authority, the formation of which is a condition precedent to the passing of the detention order will get vitiated if material or vital facts which would influence the mind of the detaining authority one way or the other are ignored or not considered by the detaining authority before issuing the detention order. In the above case three facts were not communicated to or placed before the detaining authority before it passed the impugned order against the detenu. In those circumstances, the detention order was set-aside as vitiated holding that there was non-application of mind to the most material and vital facts. The facts in the said case are misplaced to the facts in the present case.

In ***DWARIKA PRASAD*** (3 supra), the detention order was made under Maintenance of Internal Security Act, 1971. In the said case, detention order was passed on five grounds and Ground No.5 was found to be wholly misconceived, and unfounded. In those circumstances, it was held that even if one of the grounds or reasons which led to the subjective satisfaction of the detaining authority is non-existent or misconceived or irrelevant, the order of detention would be invalid and it would not avail the detaining authority to contend that the other grounds or reasons are good and do not suffer from any such infirmity, because it can never be predicted to what extent the bad grounds or reasons operated on the mind of the detaining authority or whether the detention order would have been made at all if the bad ground or reason were excluded and the good

grounds or reasons alone were before the detaining authority. After referring to the various earlier judgments of it, the Apex Court further held that the conclusion is therefore, inescapable that since ground No.5 was wholly misconceived, non-existent and not available under the law, the order of detention must be held to be invalid.

In ***DODDI SHARADA*** (1 supra) this court after considering the various decisions and provisions of Act.1 of 1986, answered the reference as under:

> "In the light of all these judgments, it is clear that what is necessary for the District Magistrate for arriving at a subjective satisfaction on the basis of the material before him is that the activities of the person are prejudicial to maintenance of public order. In terms of explanation to Section 2 (a) public order would also mean a danger to public health and if the Public Analyst, on a seized sample, was of the opinion that it is not potable or was not fit for human consumption, that in our view, is relevant material for the purpose of arriving at subjective satisfaction. In our view, it is not necessary that the percentages of different constituents of the sample should be mentioned by the Public Analyst. Even if a Public Analyst gives the composition of all the ingredients of the sample without mentioning whether the sample was fit for human consumption or not, it may not be possible for the District Magistrate to know as to whether the sample was injurious to health or not. Basically, it is the opinion of the Public Analyst, which is paramount in determining whether the liquor that was being sold, stored or manufactured, would cause danger to public health." (para 29)

In ***COLLECTOR & DISTRICT MAGISTRATE, ELURU V.SANGALA KONDAMMA***[4] the facts are that this court set-aside the detention order passed by the District Collector made under Sec. 3(1)(2) r/w Sec.2(a) and (b) of the Act 1 of 1986, which was approved by the State Government and confirmed the detention of the detenue for a period of 12 months from the date of detention ie., from 15-1-2003 by the Advisory Board holding that two of the grounds of detention

out of five were stale grounds and since the said two stale grounds could not be separated from the other grounds, the satisfaction of the detaining authority got vitiated, therefore, the order of detention cannot be sustained. On further appeal, the Supreme Court while upholding the validity of detention order and setting aside the order of the High Court held that it is not necessary for the detenue to be re-arrested to serve out the rest of the period of detention as he was taken into custody on 15-1-2003 and was released from detention pursuant to the order of the High Court on 28-4-2003. While upholding the detention order, the Supreme Court observed as under:

> "… if the facts placed before the detaining authority are proximate to each other and the last of the fact mentioned in proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside. In the instant case, it is seen that between the period from 10-1-2001 and 25-10-2002 the detenue was involved in five incidents of bootlegging which are reasonably proximate to each other and the last of the incidents being proximate to the order of detention, we think the High Court was not justified in treating the two incidents of 17-1-2000 and 10-1-2001 as stale by taking them in isolation. In our opinion, the court should have considered the proximity of the incidents between themselves which indicates the possibility of the proposed detenue continuing to indulge in the illegal activities which requires his preventive detention. In the present case, as noticed above, the five incidents recorded in the order of detention being proximate enough to each other shows the continuity of the acts of the detenue. In such a fact situation, we think the High Court erred in coming to the conclusion that two of the five grounds being not proximate to the order of detention and the order of detention was base on stale grounds. While it can be stated that the incidents of 17-1-2000 and 10-1-2001 could not by themselves have been sufficient grounds to detain the detenue but would certainly become a relevant material along with other three grounds dated 3-2-2002, 6-10-2002 and 25-10-2002 to come to the conclusion that there is a need for detaining the detenue to prevent him from indulging a similar activities in the future.

In view of the same, the previous judgment of this Court in ***S.JAYAMMMA V. COLLECTOR AND DISTRICT MAGISTRATE,***

CUDDAPAH[5] holding that even if one stale and not proximity ground is taken into consideration in arriving at the subjective satisfaction, the detention order in its entirety becomes unsustainable, will be applicable to the facts of the said case alone and each case has to be considered on its own merits with regard to proximity of crime, whether it has become stale or not in the light of the law declared by the Apex Court in ***COLLECTOR & DISTRICT MAGISTRATE, ELURU*** (4 supra), wherein the Apex Court has not agreed with the reasoning adopted by this court in the above case.

In ***R. KALAVATHI V. STATE OF T.N***[6] , the husband of the appellant was detained under T.N. Prevention of Dangerous Activities of Bootleggers, Drug-offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum-Grabbers and Video Pirates Act, 1982, which is pari materia to Act. 1 of 1986. While considering the meaning of word "habitually" the Supreme Court held as under:

This extract is taken from *R. Kalavathi v. State of T.N.,(2006) 6 SCC 14* at page 17 :

> "The expression "habit" or "habitual" has not been defined under the Gujarat Prevention of Anti-Social Activities Act, 1985. The word "habitually" does not refer to the frequency of the occasions but to the invariability of a practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person in an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a "dangerous person" unless there is material suggesting his complicity in such cases, which lead to a reasonable conclusion that the person is a habitual criminal. The word "habitually" means "usually" and "generally". Almost similar meaning is assigned to the word "habit" in *Aiyar's Judicial Dictionary* , 10th Edn., at p. 485. It does not refer to the frequency of the occasions but to the invariability of practice and the habit has to be proved by totality of facts. (See *Mustakmiya Jabbarmiya Shaikh* v. *M.M. Mehta (1995) 3 scc 237)(para 12)*

> The expression “habitually” is very significant. A person is said to be a habitual criminal who by force of habit or inward disposition is accustomed to commit crimes. It implies commission of such crimes repeatedly or persistently and prima facie there should be continuity in the commission of those offences. (See *Ayub* v. *S.N. Sinha (1990) 4 scc 552)* (para 13)

The Supreme Court in ***HARPREET KAUR V. STATE OF MAHARASHTRA***[7] while considering the identical provision of Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers and Drug Offenders Act, 1981 held that “Public Order” or “Law and Order” are two different and distinct concepts and there is abundance of authority of this Court drawing a clear distinction between the two, with a view to determining the validity or otherwise of the order of detention, it would be necessary to notice the difference between the two concepts. After referring to the various judgments rendered by it, the Supreme Court held as under:

> “The explanation to S. 2(a) (supra) brings into effect a legal fiction as to the adverse effect on 'public order'. It provides that if any of the activities of a person referred to in clauses (i)-(iii) of Section 2(a) directly or indirectly causes or is calculated to cause any harm, danger or alarm or a feeling of insecurity among the general pubtic or any Section thereof or a grave or a wide-spread danger to life or public health, then public order shall be deemed to have been adversely affected. Thus, it is the fall out of the activity of the "bootlegger" which determines whether public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act.

In the light of the law laid down in the aforementioned judgments, if we consider Grounds of Detention, an irresistible conclusion can be drawn that the detenue was habituated in

commission of crimes and is accustomed to commit crimes, of manufacturing, transporting and selling of illicit liquor. Even Chemical Analyst Report in Cr.No.10/2006-2007 clearly indicates that spurious liquor manufactured and was in possession of the detenue was found to be unfit for human consumption and earlier to the registration of said crime, he was also involved in similar activities of manufacturing and transporting illicit liquor and supplying fake EALs. Once detenue is indulging in bootlegging activities of purchase, manufacture, transport, sale and distribution of illegally manufactured spurious liquor and purchase and supply of fake material to other offenders situated in other areas of Krishna District, violating the provisions of the Excise Act, which are causing wide spread danger to public health and creating a feeling of insecurity among the general public and if the same is allowed, there is every possibility of danger to life or public health who consumes illicit liquor, which is a prejudicial activity causing danger to public health and maintenance of public order. Mere non-mention that distilled illicit liquor is injuries to public health in two crimes is immaterial, when sample drawn in Cr.No.10/2006-2007 was found to be unfit for human consumption. It is evident from the detention order, the Commissioner of Police arrived at a subjective satisfaction from the charge sheets which have been filed in other cases under the Sections of Indian Penal Code as well as Excise Act, which goes to show that he has taken into consideration the reports submitted by the Chemical Analyst, which are filed along with the charge sheets in the above case. Admittedly, charge sheets disclose enclosure of Chemical Analyst Report. Therefore, we do not see any force in the submission that non-consideration of the analyst reports of earlier two crimes vitiates the detention order.

In view of the same, the detention order passed by the

Commissioner of Police, as confirmed by the Government in G.O.Rt No.1864 dt.7-4-2007 does not suffer from any illegality warranting interference by this court.

The writ petition is accordingly dismissed.

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A.GOPAL REDDY,
J.

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P.SWAROOP REDDY, J.

Dt.10 –10-2007
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[1] 2005(2) ALT 244::2005 Crl.L.J.1916
[2] AIR 1979 SC 447
[3] AIR 1975 SC 134
[4] 2005 AIR SCW 159::AIR 2005 SC 1165
[5] 2004(3) ALT 642 (FB)
[6] (2006) 6 SCC 14
[7] AIR 1992 SC 979:L1992) 2 SCC 177